



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2004

Mr. Ken Johnson
Assistant City Attorney
City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

OR2004-1207

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196370.

The City of Waco (the "city") received a request for information relating to a specified case number. You inform us that the city has released some of the requested information. You claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the release of the information that the city seeks to withhold under section 552.108(a)(1) would interfere with a pending criminal prosecution. Based on your representations and the supporting documentation you have submitted, we conclude that section 552.108(a)(1) is applicable in this instance. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

Section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The city must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The rest of the submitted information that is encompassed by the city’s section 552.108 claim is excepted from disclosure under section 552.108(a)(1).

You also raise section 552.101 of the Government Code with regard to a social security number. Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that another statute makes confidential. A social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 at 2-4 (1994)*. It is not apparent to this office that the social security number at issue here is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the city to obtain or maintain this social security number. Thus, we have no basis for concluding that this social security number was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See Gov’t Code* §§ 552.007, .352. Therefore, before releasing the social security number that you have highlighted, the city should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov’t Code* § 552.130(a)(1)-(2). Section 552.130(a)(1) is applicable to information that relates to a Texas operator’s or driver’s license. Section 552.130(a)(2) encompasses information that relates to a Texas motor vehicle title, motor vehicle registration, or vehicle identification number. To the extent that the driver’s license and motor vehicle information that you have highlighted relates to a Texas operator’s or driver’s license or a Texas motor vehicle title, registration, or identification number, you must withhold that information under section 552.130. We have marked a small amount of additional information that also is encompassed by this section.

In summary: (1) the city may withhold the information that is encompassed by its section 552.108 claim under section 552.108(a)(1), with the exception of the basic

information that must be released under section 552.108(c); (2) the city may be required to withhold the social security number under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; and (3) the city must withhold information that relates to a Texas operator's or driver's license or a Texas motor vehicle title, registration, or identification number under section 552.130. As we are able to make these determinations, we need not address section 552.103.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

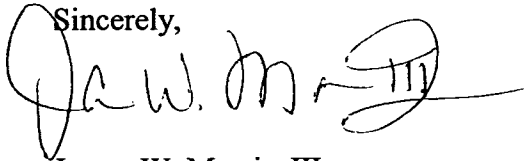
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹We note that section 552.103 generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 196370

Enc: Submitted documents

c: Mr. Fernando Frias
8066 Alameda #14
El Paso, Texas 79915
(w/o enclosures)